

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1157-DB-2011
Reserved on : 14.03.2019
Date of decision : 27.03.2019

Maninder @ Minglu

... Appellant

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH***

Present: Mr. Rajesh Gupta, Advocate
for the appellant.

Ms. Shubhra Singh, Addl. A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 19.09.2011 and 26.09.2011 rendered by the learned Additional Sessions Judge, Narnaul, passed in Sessions Case No.8 of 2009 whereby the appellant, who was charged with and tried for offences punishable under Sections 302, 376 of the Indian Penal Code (in short "IPC"), has been convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2500/- and in default payment of fine, to further undergo rigorous imprisonment for a period of three months for offence under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2500/- and in default payment of fine, to further undergo rigorous imprisonment for a period of three months for offence under Section 376 IPC.

2. The case of the prosecution in a nutshell is that on 05.08.2009

SI/ SHO Hoshiar Singh, Police Station Satnali, was present at Loharu Chowk Satnali. Lal Singh son of Devi Sahai had submitted an application on the allegations that he was resident of village Sehlang. He had taken the land of Pawan Shekhawat on *Batai* (lease). He was residing with his family at the tubewell. He along with son of Dharmdutt had gone to Loharu for taking medicines on 05.08.2009 at about 10.00 A.M. He came back at tubewell at about 02.00 P.M. The room was bolted from outside. He opened the room. His wife was lying dead on the cot. There were signs of injuries of knife on her stomach, breast, neck and left hand elbow. Blood was oozing. Salwar of his wife was also lying on the bed. His wife was murdered by some unknown person after committing rape. Police swung into action. Foot prints of unknown killer, broken bangles, blood stained *dari* (carpet) were taken into possession. On 16.08.2009 accused Maninder @ Minglu was arrested. He made disclosure statement. Knife used by him was recovered. DNA test of the accused was conducted. Body was sent for post-mortem examination. It was examined by PW-19 Dr. Deepak Garg who proved the post-mortem report Ex.PN/1.

3. The prosecution examined as many as 19 witnesses in its support. The statement of accused under Section 313 Cr.P.C. was recorded. He denied the case of prosecution. The accused was convicted and sentenced, as noticed hereinabove. Hence this appeal.

4. Learned counsel appearing for the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the judgment and order dated 19.09.2011 and 26.09.2011.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-19 Dr.Deepak Garg had led his evidence by filing his affidavit Ex.PW19/A. He noticed the following injuries on the body of deceased:-

- “(i) 4 x 2 cm incised wound over right shoulder.*
- (ii) 3 x 1 cm laceration over chest. 4 cm above umbilicus.*
- (iii) 4 x 2 cm laceration on lower chest.*
- (iv) 4 x 2 cm intestine coming out.*
- (v) 4 x 1 cm laceration 3 cm above umbilicus.*
- (vi) 3 x 1 cm laceration lower back 5 cm above right iliac crest.*
- (vii) Multiple perforations present 15 cm from duodenojejunal junction.*
- (viii) 3 x 2 cm laceration present over liver.”*

According to his opinion, the cause of death was due to hemorrhagic shock due to injuries to liver and intestine by sharp weapon. All the injuries were ante mortem in nature and sufficient to cause death in normal routine of life. Time between injury and death was variable and between death and post-mortem was within 24 hours.

8. The deceased was also examined by PW-13 Dr.Kajri Sharma. She led her evidence by filing her affidavit Ex.PN. In her opinion, possibility of rape could not be ruled out.

9. PW-2 Partap Singh, Patwari, had prepared the site plan Ex.PD.

10. PW-3 Brij Bhan Kaushik had taken the photographs of tubewell of Pawan Shekhawat.

11. PW-4 Lal Singh is the complainant. He is husband of the deceased. He deposed that on 05.08.2009 at about 10.00 A.M. he had gone

to Loharu to bring medicine. At about 2.00 PM he came back. The door of the room was bolted from outside. He unbolted the room. His wife was lying dead on the cot. He noticed the injuries of knife on the left elbow, neck, breast and abdomen. Blood was oozing out. Salwar of his wife was lying on the bed. Someone had committed murder of his wife after rape. He proved his complaint Ex.PE. In his cross-examination, he denied the suggestion that Pawan Shekhawat was not owner of alleged tubewell. After seeing the dead body, he went to nearby temple where 10/12 persons were present. They told him to inform the matter to the police. He informed Pawan Shekhawat, Advocate, who came at the spot.

12. PW-5 Pawan Shekhawat deposed that he was practicing as Advocate at Mohindergarh Court. On 16.08.2009, he was present at his house being Sunday. Suresh wife of Gajraj Singh was also present in his house. He was talking with Suresh. Meanwhile, accused Maninder @ Minglu came to his house. He was previously known to him as he was his old client. Accused confessed before him that on 05.08.2009, he had committed murder of wife of Lal Singh after committing rape upon her. He informed the police. Police came to his house. Accused made disclosure statement to the effect that on 05.08.2009, he had come to his village on the event of Raksha Bandan. He purchased liquor from Shampura liquor vend. He consumed the same. He went to the field and put off some *katchris* (vegetables) near the tubewell. One lady asked him to get out from the field. He entered in the house situated at tubewell. One lady was cleaning television by the cloth. He caught hold of her. He committed rape upon her and thereafter killed her. He had taken away Rs.100 / 150 from the box. He also confessed that he had concealed knife near the hotel at Badara Dadri

road. He could get it recovered. In his cross-examination he deposed that he had informed the police on telephone. After recording the disclosure statement of accused, police took him to police station. Police stayed at his house for about half an hour.

13. PW-11 Constable Dilbag Singh deposed that on 05.08.2009 he joined the investigation of this case along with SI/SHO Hoshiar Singh. Blood stained earth was lifted from the place of occurrence. It was put in a match box and converted into sealed parcel. On 08.09.2009 MHC Rambhagat handed over him seven sealed parcels duly sealed for depositing the same in FSL, Madhuban. He deposited the same in FSL, Madhuban on the same day. On 11.09.2009 MHC Rambhagat handed over him two sealed parcels of mould for depositing in FSL, Madhuban. He deposited the same in FSL, Madhuban.

14. PW-14 ASI Narender Kumar deposed that on 17.08.2009 accused Maninder on the basis of his disclosure statement got recovered one knife in village Badla near Mastana Hotel. Knife was converted into sealed parcel. It was taken into possession vide memo Ex.PW14/C. The knife is Ex.P1.

15. PW-15 Hoshiar Singh deposed that he was posted at P.S. Satnali as SI/ SHO on 05.08.2009. He along with police officials was present at Loharu Chowk, Satnali. Lal Singh complainant lodged complaint Ex.PE. FIR was registered. He visited the spot. He prepared rough site plan. The photographs of the spot were taken. Body was sent for post-mortem examination vide application Ex.PN/2. In his cross-examination he deposed that the place of occurrence is field of Pawan Shekhawat, Advocate. He had not taken revenue record or any proof of ownership of the field of Pawan

Shekhawat. He further deposed that salwar of the deceased was lying on the bed. He had not shown the salwar on the bed in his site plan. They reached at the place of occurrence at about 04.00 P.M.

16. PW-18 Kamal Singh deposed that accused was arrested. Accused got demarcated the place of occurrence and memo of *nishandehi* Ex.PW14/A was prepared. Accused got recovered one knife from the bushes near Mastana Hotel.

17. The case of the prosecution is that on 05.08.2009 PW-4 Lal Singh had gone to Loharu to bring medicine. He came back. He saw the door of room bolted. He entered the room. He saw that his wife was lying dead. His wife was murdered after committing rape. He informed the police. Police came to the spot. Photographs were taken. Rough site plan was prepared. Body was sent for post-mortem examination. The appellant met PW-5 Pawan Shekhawat on 16.08.2009. He made extra judicial confession before him. PW-5 Pawan Shekhawat informed the police. The appellant made disclosure statement. On the basis of which, knife was recovered. PW-5 Pawan Shekhawat has categorically deposed that the appellant had visited his house. He had made extra judicial confession in the manner he had committed rape and murder of wife of PW-4 Lal Singh. Knife was recovered at his instance. It was sent to FSL, Madhuban. The FSL reports are Ex.PN/3, PN/4 and PN/5. As per Ex.PN/3, blood was detected on exhibit-1 (blood stained earth). Exhibit-2 carpet (*dari*) was stained with blood stains. Exhibit-3a (lady's shirt) & exhibit-3b (Brassier) were stained with several large and small blood stains. Exhibit-3c (salwar) was stained with blood stains. Blood was detected on exhibit-3d (Swab). Blood was detected on exhibit-5 (knife). As per report Ex.PN/4, human semen was

detected on exhibit-3d (vaginal swab). However, semen could not be detected on rest of the exhibits. As per report Ex.PN/5, the crime impression marked exhibit-C/L1 and C/R2 specimen impression marked exhibit-S/L3 & S/R4 could have been caused by the same footwear respectively.

18. Learned counsel for the appellant has vehemently argued that extra judicial confession is a weak piece of evidence.

19. Their Lordships of Hon'ble the Supreme Court in ***Chattar Singh vs State of Haryana 2008 (4) RCR (Criminal) 133*** have held that after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Their Lordships have held as under:-

“17. Confessions may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a Magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a Magistrate or court. Extra-judicial confessions are generally those that are made by a party to or before a private individual which includes even a judicial officer in his private capacity. It also includes a Magistrate who is not especially empowered to record confessions under Section 164 of the Code of Criminal Procedure, 1973 (for short the ‘Code’) or a Magistrate so empowered but receiving the confession at a stage when under Section 164 of the Code does not apply. As to extra-judicial confessions, two questions arise: (i) were they made voluntarily? and (ii) are they true? As the section enacts, a confession made by an accused person is irrelevant in criminal proceedings, if the

making of the confession appears to the court to have been caused by any inducement, threat or promise, (1) having reference to the charge against the accused person, (2) proceeding from a person in authority, and (3) sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind, and if it is not caused by any inducement, threat or promise which has reference to the charge against him, proceeding from a person in authority. It would not be involuntary, if the inducement, (a) does not have reference to the charge against the accused person; or (b) it does not proceed from a person in authority; or (c) it is not sufficient, in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case, judged in the light of Section 24 of the Indian Evidence Act, 1872 (in short 'Evidence Act'). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity or voluntariness of the confession, the court may refuse to act upon the confession, even if it is admissible in evidence. One

important question, in regard to which the court has to be satisfied with is, whether when the accused made the confession, he was a free man or his movements were controlled by the police either by themselves or through some other agency employed by them for the purpose of securing such a confession. The question whether a confession is voluntary or not is always a question of fact. All the factors and all the circumstances of the case, including the important factors of the time given for reflection, scope of the accused getting a feeling of threat, inducement or promise, must be considered before deciding whether the court is satisfied that in its opinion the impression caused by the inducement, threat or promise, if any, has been fully removed. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt. (See R. v. Warickshall) It is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, so contrary to the feelings and principles of human nature, if the facts confessed were not true. Deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law. An involuntary confession is one which is not the result of the free will of the maker of it. So where the statement is made as a result of harassment and continuous interrogation for several hours after the person is treated as an offender and accused, such statement must be regarded as involuntary. The inducement may take the form of a promise or of a threat, and often the inducement involves both promise and threat, a promise of forgiveness if disclosure is made and threat of prosecution if it is not. (See Woodroffe's Evidence, 9th Edn., p. 284.) A

promise is always attached to the confession alternative while a threat is always attached to the silence alternative; thus, in one case the prisoner is measuring the net advantage of the promise, minus the general undesirability of a false confession, as against the present unsatisfactory situation; while in the other case he is measuring the net advantages of the present satisfactory situation, minus the general undesirability of the confession against the threatened harm. It must be borne in mind that every inducement, threat or promise does not vitiate a confession. Since the object of the rule is to exclude only those confessions which are testimonially untrustworthy, the inducement, threat or promise must be such as is calculated to lead to an untrue confession. On the aforesaid analysis the court is to determine the absence or presence of an inducement, promise etc. or its sufficiency and how or in what measure it worked on the mind of the accused. If the inducement, promise or threat is sufficient in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil, it is enough to exclude the confession. The words "appear to him" in the last part of the section refer to the mentality of the accused.

18. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the

evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

20. Similarly their Lordships of Hon'ble the Supreme Court in **Sansar Chand vs State of Rajasthan 2010 (4) RCR (Criminal) 825**, have held that there is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material. Their Lordships have held as under:-

“33. There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material vide Thimma vs. The State of Mysore - AIR 1971 SC 1871, Mulk Raj vs The State of U.P. - AIR 1959 SC 902,

Sivakumar vs. State by Inspector of Police - AIR 206 SC 563 (para 41 & 42), Shiva Karam Payaswami Tewar vs. State of Maharashtra- AIR 2009 SC 1692, Mohd. Azad vs. State of West Bengal - AIR 2009 SC 1307. In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act.”

21. However the fact of the matter is that extra judicial confession made by the appellant before PW-5 Pawan Shekhawat is duly corroborated by medical evidence produced on record. It has come in the post-mortem report that the deceased died due to injuries which were ante mortem in nature. PW-13 Dr.Kajri Sharma has also deposed that the possibility of rape could not be ruled out. Statements of PW-13 Dr.Kajri Sharma and PW-19 Dr.Deepak Garg are duly corroborated by FSL reports. The knife was got recovered at the instance of the appellant. It was stained with human blood.

21. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 27, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No